

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:)	
)	Case No. 05-21207
ASARCO LLC, et al.)	Chapter 11
)	
<u>Debtors.</u>)	

**SETTLEMENT AGREEMENT REGARDING RESIDUAL
ENVIRONMENTAL CLAIMS FOR THE
COEUR D'ALENE, IDAHO, OMAHA, NEBRASKA, AND
TACOMA, WASHINGTON ENVIRONMENTAL SITES**

WHEREAS, the Coeur d'Alene site is an approximately 1,500 square-mile area located within the Coeur d'Alene River basin of northern Idaho, which is also known as the federally designated Bunker Hill Mining and Metallurgical Complex Superfund site, that includes contaminated soil, sediments, surface water, and groundwater, fish, and migratory birds allegedly impacted by hazardous substance releases from historical mining, milling and smelting operations, as further described in the proofs of claim, and includes any location at which hazardous substances from this site have come to be located (the "Coeur d'Alene Site");

WHEREAS, the Omaha Lead Site is currently a 20 to 30 square mile federal Superfund site consisting of contaminated surface soils present at residential properties, child-care facilities, and other residential-type properties in the City of Omaha, Nebraska, that have been lead-contaminated as a result of historic air emissions from smelting/refining and other lead industrial operations, as further described in the proofs of claim, and includes any location at which hazardous substances from the Omaha Lead Site have come to be located (the "Omaha Site");

WHEREAS, the Tacoma site in Washington is a large area-wide site encompassing much of the City of Tacoma, Vashon Island, Pierce County, south King County, and northern Thurston County, that includes contaminated surface soils present at residential properties, child-care facilities, parks, and schools, in the which the State of Washington contends has been contaminated as a result of historic air emissions from arsenic and lead sources from a smelter operated by Debtor in Ruston, Washington , as further described in the proofs of claim, and includes any location at which hazardous substances from this property have come to be located (the "Tacoma Site");

WHEREAS, the Coeur d'Alene Site, the Omaha Site, and the Tacoma Site (collectively the "Residual Sites") are sites which have been or will be the subject of environmental response and/or restoration activities;

WHEREAS, the United States on behalf of the Environmental Protection Agency ("EPA"), Department of Interior ("DOI"), and United States Department of Agriculture Forest Service ("USDA/FS" or "FS") has alleged that ASARCO LLC, formerly known as ASARCO Incorporated ("ASARCO" or the "Debtor"), is a potentially responsible party with respect to the Coeur d'Alene Site and the Omaha Site;

WHEREAS, the State of Nebraska has alleged that ASARCO is a potentially responsible party with respect to the Omaha Site;

WHEREAS, the State of Washington has alleged that ASARCO is a potentially responsible party with respect to the Tacoma Site;

WHEREAS, the United States has alleged that it has incurred past response costs, and will incur additional future response costs under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C.

§§ 9601 et seq., in connection with the Coeur d'Alene Site and the Omaha Site, and that there are natural resource damages with respect to the Coeur d'Alene Site, for which ASARCO allegedly is liable;

WHEREAS, the State of Washington has alleged that it has incurred past response costs, and will incur additional future response costs under CERCLA and the Model Toxics Control Act ("MCTA"), RCW 70.105D, the State's analog to CERCLA and that there are natural resource damages, with respect to the Tacoma Site, for which ASARCO allegedly is liable;

WHEREAS, the State of Nebraska has alleged that it has incurred past response costs, and will incur additional future response costs under CERCLA, in connection with the Omaha Site, for which ASARCO is allegedly liable;

WHEREAS, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the "Bankruptcy Case");

WHEREAS, the United States filed Proof of Claim Nos. 8375, 11010, 10745, and 10746 in the Bankruptcy Case setting forth, inter alia, claims and causes of action against ASARCO under Section 107 of CERCLA for various past and future response costs and natural resource damages as defined under CERCLA in connection with the Coeur d'Alene Site and the Omaha Site;

WHEREAS, the United States' asserted a protective claim in Proof of Claim No. 10746 with respect to ASARCO's obligations under applicable law to perform future work at, inter alia, the Coeur d'Alene Site;

WHEREAS, ASARCO owns certain portions of the Coeur d'Alene Site as more particularly described in Attachment A hereto ("Coeur d'Alene Owned Properties") and the United States' Proof of Claim No. 10746 protectively set forth claims or causes of action for future response costs and work pursuant to ASARCO's status as a present owner of these parts of the Coeur d'Alene Site;

WHEREAS, on July 9, 2008, Debtors filed a Motion for Order Approving Settlement Agreement Regarding the Coeur d'Alene Box Site ("Box Operable Units") which consists of Operable Units One and Two of the Bunker Hill Mining and Metallurgical Complex Superfund site of the Coeur d'Alene Site (Docket No. 8336);

WHEREAS, the State of Washington filed Proofs of Claim numbered 10716-10733 and 11098-11115 setting forth, inter alia, claims against ASARCO under MTCA and Section 107 of CERCLA for various past and future response costs and natural resource damages as defined under MTCA and CERCLA, in connection with the Tacoma Site;

WHEREAS, on November 27, 2007, the Bankruptcy Court entered its Order Approving Partial Compromise and Settlement Regarding the Tacoma Smelter Plume Site (Docket Nos. 6364, 6137), which provided Washington an allowed claim of \$7 million for past costs and an allowed claim of \$7 million for natural resource damages at the Tacoma Smelter Site (hereafter referred to as the "Separately Settled State Matters");

WHEREAS, the Separately Settled State Matters reserved and did not in any way impact the settlement of the State of Washington's claims for future costs for the Tacoma Site as outlined in this agreement;

WHEREAS, the State of Nebraska filed proofs of claim numbered 10500 and 10501 setting forth, inter alia, claims against ASARCO under Section 107 of CERCLA for various past and future response costs as defined under CERCLA in connection with the Omaha Site;

WHEREAS, on March 23, 2007, the Bankruptcy Court entered a Case Management Order for the estimation of certain of ASARCO's environmental liabilities;

WHEREAS, on August 6-9, 15, 2007, the Court held a hearing to estimate the United States' and Nebraska's Proofs of Claim for the Omaha Site;

WHEREAS, on September 24-27, 2007, the Court held a hearing to estimate the State of Washington's Proof of Claim for future costs for the Tacoma Site;

WHEREAS, on October 9-12, 2007, the Court held a hearing to estimate the United States' Proofs of Claim for the Coeur d'Alene Site other than for the Box Operable Units;

WHEREAS, the United States' and Nebraska's Proofs of Claim, as updated by the United States' expert reports and proffers in connection with the estimation hearing, estimated ASARCO's liability for the Omaha Site to be over \$406 million to the United States on behalf of EPA and over \$2.3 million to the State of Nebraska. (See United States' and State of Nebraska's Post-Hearing Submissions Regarding the Omaha Lead Superfund Site (Docket No. 5808) and United States' and State of Nebraska's Proposed Order Estimating Claims for the Omaha Lead Superfund Site (Docket No. 5951));

WHEREAS, the United States' Proof of Claim, as updated by the United States' expert reports and proffers in connection with the estimation hearing, estimated past costs plus certain interest for the Coeur d'Alene Site (other than for the Box Operable Units) to

be over \$180 million. (See Post-Hearing Brief of the United States of America With Respect to the Coeur d'Alene Basin Site in Idaho at 1 (Docket No. 6219));

WHEREAS, the United States' Proof of Claim, as updated by the United States' expert reports and proffers in connection with the estimation hearing, estimated the cost of the performance of future work for the Coeur d'Alene Site (other than for the Box Operable Units) to be over \$2 billion. (See Post-Hearing Brief of the United States of America With Respect to the Coeur d'Alene Basin Site in Idaho at 1 (Docket No. 6219));

WHEREAS, the United States' Proof of Claim, as updated by the United States' expert reports and proffers in connection with the estimation hearing, estimated natural resource damages including assessment costs for the Coeur d'Alene Site collectively to be over \$330 million;

WHEREAS, the State of Washington's Proof of Claim, as updated by the State's expert reports and proffers in connection with the estimation hearing, asserted a claim of \$112.66 million for future costs for the Tacoma Site. (See State of Washington's Pre-Trial Brief for the Tacoma Smelter Plume at 13 (Docket No. 5873));

WHEREAS, the Bankruptcy Court has not provided any estimation ruling with respect to the Coeur d'Alene, Omaha, and Tacoma Sites;

WHEREAS, Debtors have proposed a Plan of Reorganization ("Plan") that incorporates a resolution of the Proofs of Claim (as updated) of: (A) the United States for (i) the Coeur d'Alene Site (other than with respect to EPA's claims and causes of action for the Box Operable Units which are being resolved separately and are hereafter referred to as the "Separately Settled Federal Matters") and (ii) the Omaha Site; (B) the Proof of Claim (as updated) of Washington for future costs at the Tacoma Site (other than with

respect to the Separately Settled State Matters); and (C) the Proof of Claim of Nebraska for the Omaha Site;

WHEREAS the claims and causes of action being resolved herein are referred to herein as the “Residual Environmental Claims”;

WHEREAS, the Plan identifies the Residual Environmental Claims as Class 9 and provides that in the interest of trying to foster a consensual Plan, the holders of Residual Environmental Claims have agreed, for purposes of the Plan only, to the treatment provided for in this Settlement Agreement which is incorporated into the Plan;

WHEREAS, the Plan provides that the Coeur d’Alene Owned Properties will be placed into an environmental custodial trust, the Successor Coeur d’Alene Custodial and Work Trust;

WHEREAS, the Plan provides that the Successor Coeur d’Alene Custodial and Work Trust will, as successor in interest to ASARCO for this limited purpose, perform work approved by EPA for the Coeur d’Alene Site in satisfaction and fulfillment of all liability of ASARCO to perform work pursuant to CERCLA;

WHEREAS, the Debtors, the United States, and the States of Washington and Nebraska wish to enter into the settlement agreement contemplated by the Plan for Class 9 Claims;

WHEREAS, this Settlement Agreement is expressly premised upon confirmation of the Plan and shall have no effect in the event that such a plan is not confirmed;

WHEREAS, subject to confirmation of the Plan, the parties hereto desire to settle, compromise and resolve their disputes without the necessity of a ruling by the Court estimating the Class 9 Claims;

WHEREAS, subject to confirmation of the Plan, this Settlement Agreement is intended to serve as a comprehensive settlement of the claims and causes of action by the United States against ASARCO with respect to all past costs and potential future costs incurred by the United States, natural resource damages, and the performance of any work relating to or in connection with the Coeur d'Alene Site and the Omaha Site other than the Separately Settled Federal Matters;

WHEREAS, subject to confirmation of the Plan, this Settlement Agreement is intended to serve as a comprehensive settlement of the claims by the State of Washington against ASARCO with respect to all potential future costs and the performance of any work relating to or in connection with the Tacoma Site other than the Separately Settled State Matters;

WHEREAS, subject to confirmation of the Plan, this Settlement Agreement is intended to serve as a comprehensive settlement of the claims by the State of Nebraska against ASARCO with respect to all past costs and potential future costs and the performance of any work relating to or in connection with the Omaha Site;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, and subject to confirmation of the Plan, the parties hereby agree to the terms and provisions of this Settlement Agreement ("Settlement Agreement"); and

WHEREAS, this Settlement Agreement is in the public interest, is fair and reasonable, and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their

attorneys and authorized officials, and subject to confirmation of the Plan, it is hereby agreed as follows:

I. DEFINITIONS

1. Terms not otherwise defined shall, as applicable, have the meanings provided for in CERCLA or otherwise applicable environmental law or the Plan.

II. JURISDICTION

2. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

IV. TERMS OF SETTLEMENT

4. In settlement and satisfaction of all claims and causes of action of the United States with respect to any and all costs of response incurred, or to be incurred, work to be performed and natural resource damages in connection with the Coeur d'Alene Site (including but not limited to the liabilities and other obligations asserted in the United States' Proofs of Claim (as updated) and other pleadings filed by the United States or evidence or matters presented to the Bankruptcy Court relating to the Coeur d'Alene Site but not including the Separately Settled Federal Matters):

- a. The United States on behalf of EPA shall have an allowed general unsecured claim of \$41.464 million for past costs and future oversight costs for the Site. Distributions received by the United States on behalf of

EPA under this subparagraph 4(a) shall be deposited in a Site specific special account with respect to the Coeur d'Alene Site within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substances Superfund;

- b. The Successor Coeur d'Alene Custodial and Work Trust described in Paragraphs 12-26 below shall be paid \$373.179 million within ten days of the Effective Date of the Plan. The Successor Coeur d'Alene Custodial and Work Trust shall create two subaccounts as follows: (i) one general work account funded initially with \$344.25 million which shall be used to perform work at the Site selected by EPA and (ii) a specialized work account funded initially with \$28.929 million which shall be used to perform work selected by EPA as part of its comprehensive remedy at the Coeur d'Alene Site and prioritized by DOI and USDA/FS as co-Natural Resource Trustees;
- c. The United States on behalf of DOI and USDA/FS, as co-Natural Resources Trustees, shall have an allowed general unsecured claim of \$67.5 million to be deposited into the DOI Natural Resource Damages Account 14X5198; and
- d. The United States shall also receive the Supplemental Distribution for the Coeur d'Alene Site to the extent provided in the Plan, which shall be prorated in the proportion of the amounts set forth in subparagraphs 4(a) through 4(c) above.

- e. The Plan Administrator shall make the payments to United States and the Successor Coeur d'Alene Custodial and Work Trust for the Coeur d'Alene Site required by the Plan with Available Plan Funds, and the Litigation Trustee will pay Litigation Proceeds corresponding to the United States and the Successor Coeur d'Alene Custodial and Work Trust for the Coeur d'Alene Site as required by the Plan; and
- f. The United States reserves the right to provide notice of a cap on its recoveries under subparagraph 4(e).

5. In settlement and satisfaction of all claims and causes of action of the United States with respect to any and all costs of response incurred, or to be incurred, in connection with the Omaha Site (including but not limited to the liabilities and other obligations asserted in the United States' Proofs of Claim (as updated) and other pleadings filed by the United States or evidence or matters presented to the Bankruptcy Court relating to the Site),

- a. The United States on behalf of EPA shall have an allowed general unsecured claim of \$187.5 million for the Site;
- b. The United States on behalf of EPA shall also receive the Supplemental Distribution for the Omaha Site to the extent provided in the Plan;
- c. The Plan Administrator shall make the payments to the United States on behalf of the EPA for the Omaha Site required by the Plan with Available Plan Funds, and the Litigation Trustee will pay Litigation Proceeds corresponding to the Omaha Site to EPA and the Successor Coeur d'Alene Custodial and Work Trust as required by the Plan;

- d. The United States reserves the right to provide notice of a cap on its recoveries under subparagraph 5(c); and
- e. Distributions received by the United States on behalf of EPA under this Paragraph 5 shall be deposited in a Site specific special account with respect to the Omaha Site within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site. If any proceeds remain in the Site specific special account after all work at the Omaha Lead site is complete the money will be transferred to the Hazardous Substance Superfund, after payment is made to the State of Nebraska pursuant to Paragraph 6 of this Settlement Agreement.

6. In settlement and satisfaction of all claims and causes of action of the State of Nebraska with respect to any and all costs of response incurred, or to be incurred, in connection with the Omaha Site (including but not limited to the liabilities and other obligations asserted in the Nebraska's Proof of Claim (as updated) and other pleadings filed by Nebraska or evidence or matters presented to the Bankruptcy Court relating to the Site), the State of Nebraska shall not have an allowed general unsecured claim or receive any distribution from Debtors but in the event that any proceeds from Debtors remain in EPA's Site specific account when the cleanup is complete, EPA shall pay to Nebraska 3.5% of such remaining proceeds.

7. In settlement and satisfaction of all claims and causes of action of the State of Washington with respect to any and all costs of response incurred, or to be incurred, work to be performed and natural resource damages in connection with the Tacoma Site

(including but not limited to the liabilities and other obligations asserted in the State's Proof of Claim (as updated) and other pleadings filed by the State or evidence or matters presented to the Bankruptcy Court relating to the Site but not including the Separately Settled State Matters):

- a. The State of Washington shall have a general unsecured allowed claim of \$80.357 million;
- b. The State of Washington shall also receive Supplemental Distribution for the Tacoma Site to the extent provided in the Plan.
- c. The Plan Administrator shall make the payments to the State of Washington for the Tacoma Site required by the Plan with Available Plan Funds, and the Litigation Trustee will pay Litigation Proceeds corresponding to the State of Washington's claims for the Tacoma Site to the State of Washington; and
- d. The State of Washington reserves the right to provide notice of a cap on its recoveries under subparagraph 7(c).

8. The Disclosure Statement filed by Debtors accompanying the Plan states that the allowed claims and payments required by subparagraphs 4(a) through 4(c), 5(a) and 7(a) are expected to be paid in the amount of \$750 million under the Plan (\$482.143 million for the Coeur d'Alene Site, \$187.5 million for the Omaha Site, and \$80.357 million to the State of Washington for the Tacoma Site, all of which do not include post-petition interest or payments from the Litigation Trust under the Plan). In the event that this expectation changes prior to confirmation or the United States or the State of Washington believe that there is a significant risk that such payments totaling \$750

million would not be paid under the Plan, they reserve the right to oppose confirmation of the Plan.

9. All allowed claims and payments required under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of allowed claims, including without limitation Sections 105 and 510 of the Bankruptcy Code.

10. Although the claims granted to the United States in subparagraphs 4(a), 4(c), and 5, above, are described as general unsecured claims, this description is without prejudice to the United States' alleged secured right of set-off against ASARCO's claim for tax refunds and nothing in this Settlement Agreement shall modify or waive such alleged secured claim of set-off.

11. With respect to the allowed unsecured claims set forth in subparagraphs 4(a), 4(c), and 5, and 7, above, for the United States on behalf of EPA, DOI, and FS, and for the State of Washington, only the amount of cash received respectively by each such agency or each such State for such allowed claims (and net cash received by each such agency or each such State on account of any non-cash distributions) in the Bankruptcy Case, and not the total amount of the allowed claims, shall be credited by each such agency or each such State to its account for a particular site, which credit shall reduce the liability to such agency or such State of non-settling potentially responsible parties (or responsible parties that have only partially settled their liability) for the particular site by the amount of the credit.

**V. THE SUCCESSOR COEUR D'ALENE CUSTODIAL AND
WORK TRUST**

12. On the Effective Date, a Successor Custodial and Work Trust ("Trust") shall be established and shall own and take title to the Coeur d'Alene Owned Sites. The purposes of the Trust will be to: (i) act as a successor to ASARCO solely for the purpose of performing, managing, and funding implementation of response actions, investigations, and remedial actions (and operation and maintenance thereof) selected by EPA for the portions of the Coeur d'Alene Site that are not owned by ASARCO and the portions that are owned by ASARCO, (ii) own the Coeur d'Alene Owned Sites, (iii) carry out administrative functions related to the performance of work by the Trust at both the not owned and owned portions of the Coeur d'Alene Site and other administrative functions with respect to the Coeur d'Alene Owned Sites as set forth herein, and (iv) ultimately to sell or transfer all or part of the Coeur d'Alene Owned Sites, if possible. Assets of the Trust shall be held in trust solely for all of the above purposes. EPA shall be the sole beneficiary of the Trust. The Trust shall be funded as specified in subparagraph 4(b) above and the Trustee shall establish and fund the general work account and specialized work account as provided in subparagraph 4(b). On the Effective Date, the Coeur d'Alene Owned Sites shall be conveyed by the Debtor to the Trust and the Debtor shall retain no ownership or other interest whatsoever in the Coeur d'Alene Owned Sites.

13. Dan Silver (the "Trustee"), not individually but solely in the representative capacity of trustee, is appointed as the Trustee to administer the Trust in accordance with a Trust Agreement substantially in the form attached hereto as Attachment B.

14. The Trustee will seek to have the Trust treated as a “qualified settlement fund” as that term is defined in Treasury Regulation section 1.468B-1. The Trustee will not elect to have the Trust treated as a grantor trust. The Trust will be treated as a separate taxable entity. The Trustee shall cause any taxes imposed on earnings of the Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Trust under applicable tax laws.

15. The Trustee shall use all Trust funding (including any interest earned thereon) to implement response actions, investigations, and remedial actions (and operation and maintenance thereof) selected and approved by EPA for the Coeur d’Alene Site and any administrative costs of the Trust. By January 1 of each year following the Effective Date, the Trustee shall provide to EPA a balance statement, proposed budget, and schedule for work to be performed for the coming year. EPA shall have the authority to approve or disapprove the proposed budget and schedule. The Trustee shall expend funds consistently with the approved budget, approved schedule and EPA approved work plans. The Trustee and EPA may enter into consent decrees or administrative orders on consent for the performance of work.

16. Upon the completion of response and remedial action and reimbursement of any costs therefore for the Coeur d’Alene Site, any funds remaining in the Trust shall be transferred: (1) first, in accordance with instructions provided by the United States Department of Justice to any of the other Custodial Trusts established under the Plan with remaining remediation or restoration to be performed and a need for additional trust funding; (2) second, then to the Superfund.

17. In the event that the Trust exacerbates conditions at the Coeur d'Alene Site, is seriously or repeatedly deficient or late in performance of the work or violates the provisions of this Agreement, the Trust Agreement or other related implementation agreements including any consent decrees or administrative orders on consent, the United States Department of Justice may direct that all remaining Funds in the Trust be paid to an EPA special account for the Coeur d'Alene Site for use consistent with the terms of this Agreement.

18. The United States and the Debtor shall not be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Trust or the Trust Parties, or to be an owner or operator of the Coeur d'Alene Site on account of this Agreement or actions contemplated thereby.

Trust Parties

19. The Trust, the Trustee, and the Trustee's shareholders, officers, directors, employees, consultants, agents or other parties, professionals or representatives employed by the Trust or Trustee (the "Trust Parties") shall be deemed to have resolved their civil liability under CERCLA to the United States and have contribution protection to the maximum extent permitted by law for matters addressed in this Settlement Agreement with respect to the Coeur d'Alene Site. The matters addressed in this Settlement Agreement with respect to the Trust Parties include all costs of response incurred or to be incurred and natural resource damages relating to or in connection with the Coeur d'Alene Site. In no event shall the Trust Parties be held liable to any third parties for any liability, action, or inaction of any other Party, including each other.

20. The Trust and Trustee shall take such actions and execute such documents as are reasonably requested by Debtor with respect to effectuating the Plan and the transactions contemplated thereby, providing that such actions are not inconsistent with the terms of this Settlement Agreement. To the extent that Debtor requests the Trust and the Trustee to take such an action, the Trust and the Trustee shall do so at the sole expense of Debtor.

21. The Trust Parties shall not be personally liable unless the Bankruptcy Court, by a final order, finds that they were negligent or committed fraud or willful misconduct after the Effective Date in relation to the Trustee's duties. The Trust Parties shall be indemnified, defended and held harmless from and against all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorney's fees) to the fullest extent permitted by applicable law (and any judgment and costs of defense shall be paid from the Trust funds without the Trust Parties having to first pay from their own funds) for any personal liability or costs of defense unless a determination is made by a final order of the Bankruptcy Court finding that they were negligent or committed fraud or willful misconduct in relation to the Trust or the Trustee's duties.

22. The Trust Parties are exculpated by all persons, including without limitation, holders of claims or other parties in interest, of and from any and all claims, causes of action and other assertions of liability relating in any way to Debtors or arising out of the ownership of Trust assets and the discharge of the powers and duties conferred upon the Trust and/or Trustee by the Plan, this Settlement Agreement or any order of court entered pursuant to or in furtherance of the Plan, this Settlement Agreement, or applicable law or

otherwise. No person, including without limitation, holders of claims and other parties in interest, will be permitted to pursue any claims or causes of action against any Trust Party for any claim against Debtors, for making payments in accordance with this Settlement Agreement or any order of court, or for implementing the provisions of the Plan, this Settlement Agreement or any order of court. Nothing in this Paragraph or the Settlement Agreement shall preclude the Governments from enforcing the terms of this Settlement Agreement the Trust Agreement or other related implementation agreements, including any consent decrees or administrative orders on consent against the Trust Parties.

23. Except as may otherwise be provided herein: (a) the Trust Parties may rely, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Trust Parties may consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or omitted to be taken in accordance with the advice thereof; and (c) persons dealing with the Trust Parties shall look only to the Trust assets that may be available to them consistent with the Settlement Agreement and Plan to satisfy any liability incurred by the Trust Parties to such person in carrying out the terms of this Agreement, the Plan, or any order of the Bankruptcy Court and the Trust Parties shall have no personal obligations to satisfy any such liability.

Coeur d'Alene Owned Sites

24. The Trust shall implement any institutional controls or deed restrictions requested by EPA with respect to the Coeur d'Alene Owned Sites.

25. The Trust shall provide the United States and the State of Idaho and their representatives access to the Coeur d'Alene Owned Sites at all reasonable times for the purposes of conducting response actions, investigations, sampling, assessment, planning, restoration planning, restoration activities, or related activities at or near the Coeur d'Alene Owned Sites. The Trust shall execute and record with the appropriate recorder's office any easements or deed restrictions requested by EPA for restrictions on use of the Coeur d'Alene Owned Sites in order to protect public health or safety or ensure non-interference with or protectiveness of response action.

26. The United States or a governmental unit that is a designee thereof, may at any time propose in writing to take title to any of the Coeur d'Alene Owned Sites or any part thereof. Any such proposed transfer and the terms thereof are subject to approval in writing by EPA. The Trustee may at any time seek the approval of EPA for the sale or lease or other disposition of all or part of the Coeur d'Alene Owned Sites. In the event of any approved sale or lease or other disposition under this Paragraph, the net proceeds from the sale or lease or other disposition shall be used only in accordance with the requirements for other Trust funds.

VI. OUTSTANDING OBLIGATIONS

27. All obligations of Debtor to perform work pursuant to any outstanding Consent Decree, Unilateral Administrative Order, or Administrative Order on Consent regarding any of the Residual Sites (other than the Box Operable Units and any liabilities to the United States for the Tacoma Site which are dealt with by separate settlements), and any statutory, stipulated, or other penalties allegedly due related to such orders or decrees, are fully resolved and satisfied by this Settlement Agreement as of the Effective

Date and Debtor shall be removed as a party to such orders or decrees pursuant to the terms hereof on the Effective Date of this Settlement Agreement; provided, however, that all requirements to retain records shall remain in full force and effect until the Effective Date of this Settlement Agreement, and that Debtor shall produce, or make available for production in the state and condition in which such records are found any such records so retained to EPA, the DOI, USDA/FS, or any State with respect to a Site as to which such State is a party to any order or consent decree, in accordance with the terms of Paragraph 28.

28. Between the date this Settlement Agreement is lodged with the Court and the date a plan of reorganization is confirmed by the Court, EPA, DOI, USDA/FS, or any State may request Debtor provide or make available any records that have been retained pursuant to any Order or Decree to which such agency or State is a party. Debtor shall produce such records, or make such records available for production in the state and condition in which such records are found, to the requesting party within thirty (30) days of any such request and in any event prior to the confirmation of a plan of reorganization.

VII. COVENANTS NOT TO SUE

29. With respect to the Coeur d'Alene Site (including releases of hazardous substances from any portion of such Site, and all areas affected by natural migration of such substances from such Site) and except for the Separately Settled Federal Matters and as specifically provided in Section VIII (Reservation of Rights), the United States, on behalf of EPA, DOI, and USDA/FS, covenants not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 106, 107(a), of CERCLA, 42 U.S.C. §§ 9606, 9607(a); RCRA § 7003, 42 U.S.C. § 6973, Clean Water Act § 311, 33

U.S.C. § 1321; any similar state law; or any liabilities or obligations asserted in the United States' Proofs of Claim (as updated).

30. With respect to the Omaha Site (including releases of hazardous substances from any portion of such Site, and all areas affected by natural migration of such substances from such Site) and except as specifically provided in Section VIII (Reservation of Rights), the United States, on behalf of EPA, and the State of Nebraska covenant not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a); RCRA § 7003, 42 U.S.C. § 6973; any similar state law; or any liabilities or obligations asserted in the United States' Proofs of Claim (as updated).

31. With respect to the Tacoma Site (including releases of hazardous substances from any portion of such Site, and all areas affected by natural migration of such substances from such Site) and except for the Separately Settled State Matters and as specifically provided in Section VIII (Reservation of Rights), the State of Washington covenants not to sue or assert any civil claims or causes of action against ASARCO pursuant to Sections 107(a) of CERCLA, 42 U.S.C. § 9607(a); RCRA § 7002, 42 U.S.C. § 6972; Clean Water Act § 311, 33 U.S.C. § 1321; MCTA, RCW 70.105D; any similar state law; or any liabilities or obligations asserted in the State's Proof of Claim (as updated).

32. This Settlement Agreement in no way impairs the scope and effect of the Debtor's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

33. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 29-31 and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to ASARCO's successors, assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor, assign, officer, director, employee, or trustee of ASARCO is based solely on its status as and in its capacity as a successor, assign, officer, director, employee, or trustee of ASARCO.

34. The covenants not to sue contained in Paragraphs 29-31 of this Settlement Agreement extend only to ASARCO and the persons described in Paragraph 33 above and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than ASARCO, the Governments, and the persons described in Paragraph 33. The Governments and ASARCO expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the Governments or ASARCO may have against all other persons, firms, corporations, entities, or predecessors of ASARCO for any matter arising at or relating in any manner to the Coeur d'Alene, Omaha, and Tacoma Sites and/or the Residual Environmental Claims addressed herein.

35. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the State to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or similar state laws, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to that authority. Nothing in this Settlement

Agreement shall be deemed to limit the information-gathering authority of the United States or the State under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal law or regulation, or similar state laws, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal law or regulation.

36. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Coeur d'Alene Site (other than for the Separately Settled Federal Matters), and against the United States and State of Nebraska with respect to the Omaha Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Coeur d'Alene and Omaha Sites. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

37. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the State of Washington with respect to the Tacoma Site (other than for the Separately Settled State Matters), including but not limited to: any direct or indirect claim for reimbursement under state law; any claims against the State, including any of its departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42

U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Tacoma Site.

VIII. RESERVATION OF RIGHTS

38. The covenants not to sue set forth in Section VII do not pertain to any matters other than those expressly specified therein. The Governments reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other persons with respect to all other matters, including but not limited to: (i) Separately Settled Federal Matters and Separately Settled State Matters; (ii) any action to enforce the terms of this Settlement Agreement or the Trust Agreement; and (iii) liability for response costs, natural resource damages (including natural resource damage assessment costs), and injunctive relief under CERCLA Sections 106 and 107, or similar state laws, for Debtor's future acts creating liability under CERCLA, or similar state laws, that occur after the Effective Date of this agreement. Debtor's future acts creating liability under CERCLA or similar state laws do not include continuing releases related to Debtors' conduct prior to the Effective Date. Nothing in this Settlement Agreement shall affect or waive any rights, claims, or causes of action of the United States for the Tacoma Site. Nothing in this Settlement Agreement shall affect or waive any covenant not to sue or contribution protection ASARCO has regarding the Tacoma Site.

39. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

IX. CONTRIBUTION PROTECTION

40. The parties hereto agree that, as of the Effective Date, ASARCO is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of

CERCLA, 42 U.S.C. § 9613(f)(2) for matters addressed in this Settlement Agreement, except with respect to the claims proposed to be allowed to Hecla Limited (“Hecla”) with respect to the Box Operable Units under Debtor’s separate settlement with Hecla. The matters addressed in this Settlement Agreement include all costs of response incurred or to be incurred and natural resource damages relating to or in connection with the Coeur d’Alene and Omaha Sites (other than the Separately Settled Federal Matters or the past costs of Hecla) and all costs of response incurred or to be incurred by the State of Washington relating to or in connection with the Tacoma Site other than the Separately Settled State Matters.

X. PUBLIC COMMENT

41. This Settlement Agreement will be subject to a public comment period following notice published in the Federal Register, which may take place concurrent with the judicial approval process under Paragraph 42 hereof. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the United States will provide the Court with copies of any public comments and its response thereto.

XI. JUDICIAL APPROVAL

42. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The Debtor shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

XII. RETENTION OF JURISDICTION

43. This Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

XIII. EFFECTIVE DATE

44. This Settlement Agreement shall be effective only when each of the following occurs, and upon the latest of (i) the approval by the Court in accordance with Paragraphs 41 and 42 hereof, and (ii) the confirmation of the Plan incorporating this Settlement Agreement. If the Plan is not confirmed, this Settlement Agreement shall be null and void and of no further effect.

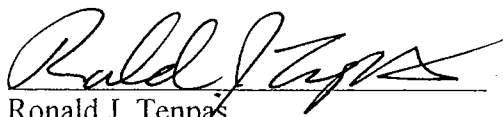
XIV. SIGNATORIES/SERVICE

45. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

Date: 31 July 2008



Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: July 31, 2008



Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

Date: _____

Elin D. Miller
Regional Administrator, Region 10
U.S. Environmental Protection Agency

Date: _____

John B. Askew
Regional Administrator, Region 7
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

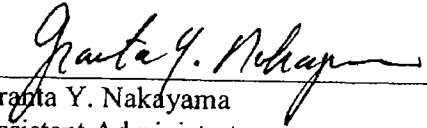
Date: _____

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: _____

Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

Date: 7-30-2008



Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

Date: _____

Elin D. Miller
Regional Administrator, Region 10
U.S. Environmental Protection Agency

Date: _____

John B. Askew
Regional Administrator, Region 7
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

Date: _____

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice


Date: _____

Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

Date: 7/30/08



Elin D. Miller
Regional Administrator, Region 10
U.S. Environmental Protection Agency

Date: _____

John B. Askew
Regional Administrator, Region 7
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

Date: _____

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: _____

Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

Date: _____

Elin D. Miller
Regional Administrator, Region 10
U.S. Environmental Protection Agency

Date: July 30, 2008

for *William Rice*
John B. Askew
Regional Administrator, Region 7
U.S. Environmental Protection Agency

FOR THE STATE OF WASHINGTON

Robert M. McKenna
Attorney General

Date: 7-31-08

Mary Ann Wilson SRAAG
for Elliott Furst
Senior Counsel
Ecology Division

Date: 7-31-08

Jim Harmony #32236
Jim Harmony
Assistant Attorney General
Ecology Division

FOR THE STATE OF NEBRASKA

Jon Bruning
Nebraska Attorney General

Date: _____

Katherine J. Spohn
Assistant Attorney General

Date: _____

Annette Kovar
Legal Counsel
and Special Assistant Attorney General
Nebraska Department of Environmental
Quality

FOR THE STATE OF WASHINGTON

Robert M. McKenna
Attorney General

Date: _____

Elliott Furst
Senior Counsel
Attorney General of Washington
Ecology Division

FOR THE STATE OF NEBRASKA

Jon Bruning
Nebraska Attorney General

Date: July 31, 2008


Katherine J. Spohn
Katherine J. Spohn
Assistant Attorney General

Date: July 31, 2008

Annette Kovar
Annette Kovar
Legal Counsel
and Special Assistant Attorney General
Nebraska Department of Environmental
Quality


FOR ASARCO, LLC

Date: July 31, 2008



Thomas L. Aldrich
Vice President, Environmental Affairs

Date: 07-31-08



Douglas E. McAllister
Executive Vice President, General Counsel